JOSEPH PUSPAM

v.

MENTERI SUMBER MANUSIA, MALAYSIA & ANOR

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
HAIDAR MOHD NOOR JCA
ABDUL KADIR SULAIMAN JCA
[CIVIL APPEAL NO: W-01-97-1998]
20 JULY 2001

ADMINISTRATIVE LAW: *Exercise of administrative powers - Discretion - Refusal of minister to refer dispute to Industrial Court - Whether minister must give reasons for refusal to refer - Whether minister can be compelled to give reasons*

LABOUR LAW: *Industrial Court - Reference - Discretion of minister - Refusal to refer - No reasons given - Whether minister obliged to give reasons - Whether minister can be compelled to give reasons*

This was an appeal by the workman ('the appellant') against the decision of the High Court dismissing his application for *certiorari* challenging the refusal of the minister to refer his representations to the Industrial Court. The only issue of law that arose for decision in this appeal was whether the minister was obliged to give reasons for his refusal to refer the appellant's representations to the Industrial Court.

Held:
Per Mokhtar Sidin JCA

[1] The minister, in exercising his discretion under s. 20(3) of the Industrial Relations Act 1967, was not obliged to give any reasons for his refusal to refer the appellant's representations to the Industrial Court, nor could he be compelled to do so by the instant court.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi yang menolak permohonannya untuk *certiorari* bagi menentang keengganan menteri merujuk perwakilannya kepada Mahkamah Perusahaan. Hanya satu isu perundangan yang memerlukan keputusan dikemukakan iaitu samada menteri berkewajipan memberi alasan untuk menerangkan keengganannya merujuk perwakilan perayu kepada Mahkamah Perusahaan.

Diputuskan:
Oleh Mokhtar Sidin HMR

[1] Menteri, dalam menggunakan kuasanya untuk membuat pertimbangan di bawah s. 20(3) Akta Perhubungan Perusahaan 1967, tidak berkewajipan memberi alasan untuk menerangkan keenggannya merujuk perwakilan perayu kepada Mahkamah Perusahaan, dan juga tidak boleh disuruh oleh mahkamah untuk berbuat demikian.

[Rayuan ditolak.]

Case(s) referred to:
Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan And Another Appeal [1997] 1 CLJ 665 ***(dist)***
Minister of Labour, Malaysia v. Chan Meng Yuen And Another Appeal [1992] 4 CLJ 1808; [1992] 1 CLJ (Rep) 216 ***(foll)***
Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor [1990] 1 MLJ 112 ***(foll)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(3)

For the appellant - Karpal Singh (M Manoharan); M/s Karpal Singh & Co
For the 1st respondent - Narimah Moris FC
For the 2nd respondent - HC Yong (Andrew TC Saw); M/s Ng Yook Woon, Andrew TC Saw & Co

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R3-25-18-1997]

Reported by Suresh Nathan

JUDGMENT

Mokhtar Sidin JCA:
The appellant was employed by the second respondent, Esso Production Malaysia Inc., as a purchasing analyst since 24 December 1979. The appellant was charged by the second respondent with six charges of misconduct which was said to be inconsistent with express and implied terms of his employment including specifically the Company's Business Ethics and Conflicts of Interest Policies. The charges are as follows:

(1) That on or about 5 June 1994, you received RM3,000 cash from the company's contractor, Hi-Active Industries Sdn Bhd or its representative as payment made in relation to the award of the following Purchase Orders to Hi-Active Industries Sdn Bhd:

(a) Purchase Order No. 45007927
(b) Purchase Order No. 45008860
(c) Purchase Order No. 45008959

(d) Purchase Order No. 45008682

(e) Purchase Order No. 45008647

(f) Purchase Order No. 45009343

(g) Purchase Order No. 45009577

(h) Purchase Order No. 45009650

(2) That in February 1993, you instructed the company's contractor, Oilquip Services Sdn Bhd or its representative to increase their bid unit price for a Heavy Duty Fenestra Door from RM1,558/unit (the original bid price submitted by Oilquip Services Sdn. Bhd. in response to a bid enquiry referenced as "M&P-KE-12111/JANA") to RM2,158/unit.

(3) That you concealed and failed to disclose to the Company's Management the existence of the abovementioned irregularities. (exh. JP5 Lampiran 13).

(4) That during the period between 1 October 1993 and 31 October 1993 you instructed the company's contractor Fleetcoins Sdn. Bhd. or its representative to increase their bid unit price for a "TIG AIR, AIR POWERED PORTABLE HACKSAW" from RM2,263.90/unit (the original bid price submitted by Fleetcoins Sdn. Bhd. in response to the bid enquiry referenced as "M&P-KE-1901 (JP) to RM4,063.90/unit.

(5) That during the period between 1 November 1993 and 31 December 1993 you received RM1,000 from the company's contractor, Fleetcoins Sdn Bhd or its representative as payment made in relation to Local Purchase Order No. 3 KE-1901 awarded to Fleetcoins Sdn Bhd in response to the bid enquiry referenced as "M&P-KE-1901 (JP)".

(6) That on or around 8 June 1993 you received RM4,000 from the company's contractor, Oilquip Services Sdn Bhd or its representative as payment made in relation to various purchase orders awarded to Oilquip Services Sdn. Bhd. during the period between January 1993 and 31 May 1993. (exh. JP6 Lampiran 13).

As a result of those charges an internal inquiry was held on 6 February 1995 where the appellant did not present himself even though he was informed of the place, date and time. After considering the facts, documents, statements and the submissions tendered at the inquiry, it was found that the charges had been proved. The respondent's management found that the misconducts committed by the appellant as stated above were serious. As a result of that a letter dated 9 February 1995 was issued whereby the appellant's employment was terminated with immediate effect.

Being dissatisfied with that termination, the appellant made a representation to the Minister. By a letter dated 24 December 1996, the Minister informed the appellant that there was no necessity to refer the appellant's representation to the Industrial Court. The appellant then made the present application to the High Court, Kuala Lumpur.

At the High Court the appellant relied on two grounds:

(a) The Minister before making his decision failed to consider the fact that the notes of proceedings in respect of the inquiry were not given by the respondent.

(b) The Minister failed to give any reason for his decision.

The learned judge dismissed the appellant's application with cost. Being dissatisfied with that decision the appellant appealed to this court.

Before us, Mr. Karpal Singh, the learned counsel for the appellant, informed us that the only ground that he is relying on is "that the Minister failed to give any reason for his refusal to refer the appellant's representation to the Industrial Court". Mr. Karpal Singh, in his usual manner, conceded that that was the only issue in the present appeal. It was further conceded by Mr. Karpal Singh that the line of authorities both in the Federal Court and the Court of Appeal are against him except for the decision of the Court of Appeal in *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Another Appeal* [1997] 1 CLJ 665. Mr. Karpal Singh relied on the judgment of Gopal Sri Ram, JCA at pp. 733 to 735 when his Lordship said:

> In my judgment, as a general rule, procedural fairness, which includes the giving of reasons for a decision, must be extended to all cases where a fundamental liberty guaranteed by the Federal Constitution is adversely affected in consequence of a decision taken by a public decision-maker. Whether a particular right is a fundamental liberty, and therefore falls within the wide encompass of any of the articles under Pt. II of the Federal Constitution is a question that has to be dealt with on a case by case basis. Suffice to say that the instant appeals are concerned with a fundamental liberty.
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> I have expressed the extent and content of procedural fairness in general terms because cases may and do occur where it may be not be feasible or desirable to accord any procedural fairness or, alternatively, the full breadth of procedural fairness in respect of a decision which may adversely affect those rights of which I have spoken.
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> Land acquisition cases best illustrate the feasibility postulate. If the constitutional requirement of procedural fairness is insisted upon in every case where property is acquired through state action, public administration would grind to a halt as would the development of the country. It would result in

the necessity of holding an inquiry to determine the propriety of acquisition even in a case where a few square feet of land is required to widen a public thoroughfare. In recognition of the disastrous consequences that would ensue from an inflexible approach, Parliament has properly confined the right to procedural fairness to the issue of adequate compensation in cases where private property is acquired by the state. The decision of the Federal Court in *S. Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors.* [1982] CLJ 65 exemplifies the need for maintaining the feasibility restriction in the field of procedural fairness.

Again, the national security, public safety or public interest are considerations that may exclude procedural fairness in a particular case. The burden of showing that reason for a decision ought not to be given lies, of course, upon the public decision-taker. And his mere *ipse dixit* upon the question is inconclusive. There must be some basis or material for suggesting that questions of public safety, public interest or national security or one or more of these are involved. In some cases, it may be quite plain and obvious from the very subject matter that they are. In others, it may not be so. Ultimately, it is for the courts to determine whether, upon the facts and circumstances of a particular case, the plea ought to be upheld.

There are, in my judgment, good reasons of policy to require a public decision-taker to give reasons for his decisions. The first of these I have already made mention of. It is the difference in consequences resulting from the failure of a judge in England and in this country to give reasons for his decision.

Secondly, the furnishing of reasons enables an objective assessment of whether the decision is fair. Hence, it forms an integral part of procedural fairness.

Thirdly, the giving of reasons makes for good administration. I have, earlier in this judgment, alluded to the need for courts to have regard to the national ethos and the aspirations of a democratically-elected government when interpreting the Federal Constitution. There have been repeated calls, by those elected to govern, for the need to have a clean, efficient and trustworthy administration. Courts, by their decisions, must assist in the achievement of the declared policy.

The imposition of a duty upon public decision-takers to furnish reasons in cases affecting fundamental rights achieves the national aim. When a public decision-taker gives reasons, he reveals his mind and exposes for curial scrutiny the basis for his decision.

Administrators will therefore be encouraged to ensure that their decisions are fair and reasonable and in keeping with both legislative policy as expressed in the relevant Act of Parliament and executive policy as declared by the elected government. Unjustified secrecy for decisions of a public nature, on the other hand, make room for suspicion, distrust and poor administration, leading to inefficiency and unwarranted allegations.

> For these reasons, I unhesitatingly reject the eight submission advanced on behalf of the Minister and the appellant. To reiterate, the Minister, when refusing to refer representations in the exercise of his discretion under s. 20(3) of the Act, is reasonably expected to give reasons for his decision. This is because the decision he makes has an impact upon a fundamental right conferred by the Federal Constitution. Considerations of feasibility, public interest or national security do not apply here.

Of course, he may not be procedurally compelled to furnish them:

> *see Sanjiv Oberoi. But if he gives no reason or inadequate reasons, then, it is open for a court to conclude that he had no good reasons for making the decision he did. The reasons he gives are, of course, subject to curial scrutiny for the purpose of determining whether he had exercised his discretion in accordance with law.* (emphasis added).

With the greatest respect to Mr. Karpal Singh, it is clear to me that the above passages do not subscribe to the idea that the Minister should be compelled to give reasons for his decision and this is reflected in the last paragraph I have cited. His Lordship only said that "it is a matter of prudence that the Minister is required to give reasons for his decision".

In the same case, Siti Norma Yaakob JCA (as she then was), delivering a separate judgment, at p. 752 said:

> In his one-sentence letter informing the respondent of his decision, the second appellant gives no reason for his decision, and likewise in his affidavit-in-reply. There is no statutory duty to give reasons, but in the modern climate of administrative law, such an omission may no longer be justified. 'The giving of reasons may be inconvenient, but I can see no ground at all why it should be against the public interest: indeed rather the reverse. That being so, I would ask simply: is a refusal to give reasons fair? I would answer without hesitation that it is not.' (Per Lord Mustill in *Doody*'s case.)
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> Nearer at home the situation can be gauged from the cases of *Minister of Labour, Malaysia v. Chan Meng Yuen and Another Appeal* [1992] 2 MLJ 337; *Minister of Labour, Malaysia v. National Union of Journalists, Malaysia and Another Appeal* [1991] 1 MLJ 24 and *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 MLJ 112. 'The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision.' (Per Lord Keith of Kinkel in the case of *R v. Secretary of State for Trade and Industry, ex p Lonrho plc* [1989] 1 WLR 525, a pronouncement that was approved and adopted by the Supreme Court in *Chan Meng Yuen*'s case.)

> In the light of the second appellant's omission to give reasons for his decision, can this court, like the court of first instance, go into the merits of the respondent's complaint to see whether it is frivolous or vexatious and whether the second appellant had acted fairly and reasonably in deciding as he did? I answer this question positively, provided that such considerations are limited to the materials that were before the second appellant as courts of review, both the court of first instance and this court cannot go beyond what had already been placed before the second appellant for his consideration. As authority for this, see the cases of *Lie Seng Fatt, National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower* [1980] 2 MLJ 189, and *Chan Meng Yuen,* where the court concerned went through the merits of each complaint when deciding whether such complaint is perverse, frivolous or vexatious.

With the greatest respect to Mr. Karpal Singh, upon reading *Hong Leong Equipment Sdn Bhd*, I am of the view that that decision is not the authority where the Minister is compelled to give reasons for his decision. When the Minister refuses or did not give any reasons for his decision that by itself would not nullify the decision but then the court is at liberty to go into the merits of the complainant's complain as stated by Siti Norma Yaakob JCA in the above passages.

As intimated to Mr. Karpal Singh at the trial, this court and I are bound by the decisions of the superior court where it has been established that the Minister is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967. There are numerous decisions in respect of this and for the purposes of this appeal suffice for me to cite two of them. The first is the decision of the Supreme Court (the Federal Court then) in *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 MLJ 112. At p. 113 Abdul Hamid LP (as he then was) said:

> As for this appeal, we are of the view that on the evidence in this case the Minister of Labour had not acted unreasonably. There is no evidence that the Minister had acted in bad faith or that he was biased against *Sanjiv Oberoi.* **The Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967.** (emphasis added).

This decision was followed in *Minister of Labour, Malaysia v. Chan Meng Yuen and Another Appeal* [1992] 4 CLJ 1808, [1992] 1 CLJ (Rep) 216. Harun Hashim SCJ said:

> From this affidavit it is clear that the various steps have been complied with up to the stage when the Minister decided not to refer the representations to the Industrial Court. *It is equally clear he has not stated his reasons in arriving at that decision. The question is whether he is required by law to do so. This court, in Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor held*:

The Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967.

The next question is whether the Minister is required to give his reasons when challenged in *certiorari* proceedings. During the course of argument, several cases were cited to us but they were all cases where the Minister had given his reasons: see eg *Minister of Labour, Malaysia v. National Union of Journalists, Malaysia and Another Appeal.* **What is clear from the decided cases, however, is that the courts cannot compel the Minister to give reasons for his decision where there is no duty to do so:** *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor.* Indeed in *R v. Northumberland Compensation Appeal Tribunal, ex p Shaw,* Lord Denning at p. 352 said:

> I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, **nor the reasons**, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, *certiorari* lies to quash the decision. (emphasis added.)

In *R v. Secretary of State for Trade and Industry, ex p Lonrho plc,* Lord Keith of Kinkel in the House of Lords said at p. 529:

> The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision.

On what facts and circumstances should a judicial review court rely when deciding whether the Minister has exercised his discretion according to law? In like cases as the present, the real contesting parties are the employer and the workman. Both sides have presented their version of the case to the court which cannot be any different from that laid before the Director General of Industrial Relations and the Minister. That is the only material which the court has to consider. **In the present case, there is only the bare allegation that the Minister has acted unreasonably because he has not given reasons for his decision. That is not enough.** (emphasis added).

From the authorities cited above, it is clear to me that the Minister in exercising his discretion under s. 20(3) of the Industrial Relations Act 1967 is not required to give any reason for exercising that discretion. The courts cannot compel the Minister to give reasons for his decision.

In the present appeal, as conceded by Mr. Karpal Singh, the only issue is whether the Minister could be compelled to give reasons for his decision under s. 20(3) of the Industrial Relations Act 1967. I have to answer that issue in the negative.

I see no reason to disturb the decision of the learned judge. My learned brothers, Haidar Mohd. Noor and Abdul Kadir Sulaiman, JJCA concur with the views I have expressed. We are unanimous that the appeal be dismissed. The decision of the learned judge is hereby affirmed. There will be no order as to cost. The deposit is to be refunded to the appellant.